

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,  PLAINTIFF,  V.  DAVID COSME-RIVERA; HECTOR IVAN MACHUCA; WILFREDO CORDERO; ALL D/B/A "GRANJA LA GALLINITA DE ORO" DEFENDANTS.	CIVIL NO. _____
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COMPLAINT FOR CONSENT JUDGMENT

TO THE HONORABLE COURT:

COMES NOW, the United States of America, represented by the undersigned attorneys and very respectfully STATES, ALLEGES, AND PRAYS:

1. This is a statutory injunctive relief action brought pursuant to the Poultry Products Inspection Act (21 U.S.C. § 451 et. seq.)(PPIA), to enjoin the Defendants from violating the PPIA and the regulations promulgated thereunder, with respect to Defendants David Cosme-Rivera, Hector Ivan Machuca, and Wilfredo Cordero, operating under the business name of Granja La Gallinita de Oro from selling, transporting or offering for sale or receiving in transportation, in commerce, any poultry products required to be inspected under the PPIA unless they have been so inspected and passed and for failing to maintain complete and accurate business records.

2. This court has jurisdiction over this action pursuant to 28 U.S.C. §§1331, 1337 and 1345, and 21 U.S.C. § 467c. Venue in this district is proper pursuant to 28 U.S.C. §§ 1391(b) and 1391(c).

3. The Plaintiff is the United States of America.

4. Defendant Mr. David R. Cosme Rivera (Cosme), is owner and operates a business under the name of “Granja La Gallinita de Oro” dedicated to the slaughter and sale of poultry products in Bayamon, Puerto Rico. Defendants Mr. Hector Ivan Machuca (Machuca), and Mr. Wilfredo Cordero (Cordero) employed at Granja La Gallinita de Oro, and as such are business partners of Cosme, but have no decision making authority in administration of Granja La Gallinita de Oro. Granja La Gallinita de Oro is an unincorporated entity operating under the laws of the Commonwealth of Puerto Rico. The business operates as a slaughter and process facility and sells poultry to walk-in customers as well as to other retail accounts.

## II

5. Puerto Rico is designated pursuant to 21 U.S.C. § 454(c)(1) and 9 C.F.R. § 381.221, as a state in which the requirements of sections 1 through 4, 6 through 10, and 12 through 22 of the PPIA shall apply to operations and transactions wholly within the State.<sup>1</sup> Therefore, those provisions of the PPIA apply to establishments within the state at which poultry products are transported, prepared, and sold for use as human food, solely for distribution within the state and to operations and transactions conducted wholly within the state to the same extent and in the same manner as if such operations and transactions were conducted in or for interstate commerce.

6. The PPIA prohibits any person, firm or corporation from selling, transporting or offering for sale or receiving in transportation, in commerce, any poultry products required to be inspected under the PPIA unless they have been so inspected and passed. (21 U.S.C. §§ 458(a)(2)(B).

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<sup>1</sup> Section 453(b) of the PPIA defines “State” as “any State of the United States and the Commonwealth of Puerto Rico.” (21 U.S.C. § 453(b))

7. The PPIA requires that entities in the poultry business maintain proper records. Specifically, section 460(b)(2) requires that such records be kept as are properly necessary for the effective enforcement of the PPIA in order to insure against adulterated or misbranded poultry products for the American consumer.

### III

8. From January 2014 to December 2014, Defendants slaughtered, processed, offered for sale and sold and transported into commerce, approximately 32,575 poultry birds without federal inspection. The slaughtering, processing, offering for sale and selling, and transporting violated the provisions of 21 U.S.C. § 458(a)(1) and (2)(b) because the product had not been inspected and passed as required, and was not exempted from such inspection as permitted by 21 § 464(c). Defendants have also exceeded the 20,000 poultry slaughter limit in the years 2011, 2013, 2014, and 2016. Years 2012, and 2015 were not audited by the USDA. Furthermore, the United States has not made a final assessment as to years 2017, and 2018.

9. The United States Department of Agriculture, Food Safety and Inspection Services, submits that Defendant continued to violate the provisions of 21 U.S.C. § 458(a)(1) and (2)(b) and 21 U.S.C. § 464 up until 2016. Final calculations have not been made as to 2017, but patterns of sales similar to 2016 would tend to show non-compliance as well.

10. From on or about the year 2011 through on or about the year 2017, Defendants failed to provide USDA with complete and accurate business records pertaining to its purchase and subsequent sale of poultry products, in violation of 21 U.S.C. § 460(b)(2). Plaintiff further alleges on information and belief that Defendants will, unless enjoined, continue to violate the PPIA.

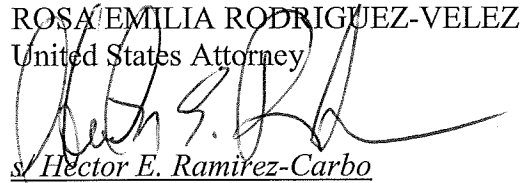
WHEREFORE, the United States of America, respectfully requests that this Court:

1. Enjoin the Defendants David Cosme-Rivera, Hector Ivan Machuca, Wilfredo Cordero, and the business of Granja La Gallinita del Oro, and all of its directors, officers, agents, servants, representatives, employees, successors or assigns and any and all persons in active concert or participation with it directly or indirectly, from slaughtering, processing, offering for sale, selling and transporting in commerce, uninspected poultry and poultry products required to be inspected and passed by the United States Department of Agriculture, unless such products are so inspected and passed, unless they comply with the limitations set forth by the exemptions contained in 21 U.S.C. § 464(c).
2. Enter a permanent injunction enjoining Defendants, and the agents, servants, employees, and attorneys of Defendants, and those persons in active concert or participation with Defendants and their agents, servants, employees and attorneys, from failing to maintain required records;
3. Order the Defendant to provide a copy of this Court's Order within ten days of its entry to each and all of its directors, officers, agents, servants, representatives, employees, and to provide an affidavit of compliance within thirty days of the entry of the Order stating the fact and manner of compliance with this paragraph and identifying the names and positions of all persons so notified.
4. Grant the United States its costs and such other and further relief as this Court deems just and proper.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 24 day of May, 2018.

ROSA EMILIA RODRIGUEZ-VELEZ  
United States Attorney

  
s/ Hector E. Ramirez-Carbo

Assistant U.S. Attorney  
Chief, Civil Division

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## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

United States of America

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Hector E. Ramirez-Carbó  
Assistant United States Attorney-Civil Chief  
United States Attorneys Office**DEFENDANTS**David Cosme-Rivera, Hector Ivan Machuca, Wilfredo Cordero, All D/B/A,  
"Granja La Gallinita de OroCounty of Residence of First Listed Defendant Bayamon, PR

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 451

Brief description of cause:

Poultry Products Inspection Act violation

**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

05/30/2018

SIGNATURE OF ATTORNEY OF RECORD

s/ Hector Ramirez-Carbo

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

**CATEGORY SHEET**

**You must accompany your complaint with this Category Sheet, and the Civil Cover Sheet (JS-44).**

Attorney Name (Last, First, MI):

USDC-PR Bar Number:

Email Address:

1. Title (caption) of the Case (provide only the names of the first party on each side):

Plaintiff:

Defendant:

2. Indicate the category to which this case belongs:

☐ Ordinary Civil Case

☐ Social Security

☐ Banking

☐ Injunction

3. Indicate the title and number of related cases (if any).

4. Has a prior action between the same parties and based on the same claim ever been filed before this Court?

☐ Yes

☐ No

5. Is this case required to be heard and determined by a district court of three judges pursuant to 28 U.S.C. § 2284?

☐ Yes

☐ No

6. Does this case question the constitutionality of a state statute? (See, Fed.R.Civ. P. 24)

☐ Yes

☐ No

Date Submitted: